P.R. No. 1587/06
Presented by Smt. Sharda Singh
dated 12/6/06

CF 10
(3)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR CHHATTISGARH

M.C.C. NO. 325 OF 2006 **Single Bench**

( Arising out of W.P. No. 1015 Of 2004)

BETWEEN

Ismail Khan (Dead)

Aghori Lal Kuldip S/o Kirit Ram Chouhan, aged about 49 years, resident of Kachhari Chowk, Sarangarh, District Raigarh (CG).

APPLICANT
PETITIONER

VERSUS

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CLERK HIGH COURT BILASPUR
12/6/06

1. State of Chhattisgarh- Through The Collector, Raigarh (CG).

2. Salim Mohammad S/o Sakur Mohammad , aged about 43 years, occupation service (Krishi Uapj Mandi Sarangarh), resident of Ward No.3, Safi Gali Sarangarh District Raigarh (CG).

3. Mahendra Kumar S/o Sitaram Agrawal, aged about 32 years, occupation businessman, resident of Sadar Raod, Sarangarh District Raigarh (CG).

4. Uddhav S/o Kurso Vishwakarma, aged about 57 years, occupation Lohari business , resident of Pratapganj, Sarangarh Tahsil Sarangarh District Raigarh (CG).

5. Sottamlal S/o Shyamlal , aged about 40 years, caste Kahar, occupation agriculture, resident of Sarangarh District Raigarh (CG).

6. Shiv Kumar S/o Radheshyam, aged about 31 years, occupation agriculture, resident of Sarangarh, District Raigarh (CG).

RESPONDENTS

APPLICATION FOR RESTORATION OF WRIT PETITION NO.1015/2004 (BETWEEN ISMAIL KHAN (DEAD) AGHORI LAL KULDIP VERSUS STATE OF CHHATTSIGARH AND OTHERS ) DISMISSED IN DEFAULT OF FOR WANT OF PROSECUTION ON DATED 30.7.2004

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

**मामला क्रमांक ..M.C.C..325/सन् 2006**

**आदेश पत्रक (पूर्वानुबद्ध)**

| आदेश का दिनांक तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
|---|---|---|

5-7-2006

Mr. Sunil Sahu, counsel for the applicant.

Heard on admission.

This M.C.C. has been filed for restoration of Writ Petition No.1015/2004 to its original number, which was dismissed by this Court on 30th July, 2004 on the ground of non-prosecution, as on that day when the matter was called, none present.

I have perused the M.C.C. in which it has been mentioned that one Mr. Lakhu Thawait, clerk of lower court counsel practicing in Tehsil Court, Sarangarh, through whom the petition was received, came and withdrawn the file from the Office of counsel for the petitioner on 18-4-2004, therefore, when the matter was listed on 30th July, 2004, no body was present on behalf of the petitioner. In para 3 of the application it has been mentioned that on 18-4-2006, said Lakhu Thawait again came and delivered the file to the counsel on which he was asked to send the party so that affidavit can be filed. The applicant came and contacted the counsel on which affidavit was filed on 26-5-2006 and thereafter, due to summer holidays, the application for restoration could not be filed. As the file was withdrawn from counsel for the petitioner, therefore due to oversight, counsel for the petitioner could appear on 30th July, 2004 and the mistake is bona fide.

This M.C.C. has been filed with the delay of 652 days and M.(C.)P. No.1010/2006, application for condonation of delay in filing the restoration application, has been filed and same thing has been mentioned in this application for condoning the delay, as mentioned in the M.C.C.

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

**मामला क्रमांक** ...M.C.C.325/**सन्** 2006

**आदेश पत्रक (पूर्वानुबद्ध)**

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|---|---|---|
| | The applicant is required to explain each day's delay that he was not negligent and that there was sufficient cause for the delay, same was reasonable and bona fide also. The facts as narrated above show that the applicant was negligent. Lakhu Thawait, who engaged counsel for the petitioner for filing the petition, himself took the file on 18-4-2004 for engaging some other counsel and thereafter, he did not appear, but name of the counsel for the petitioner appeared in the case list, even then the counsel was not present on 30th July, 2004 when the matter was called. After, about one year nine months, Lakhu Thawat again contacted the counsel on which this application was filed on 26-5-2006. Above fact shows that there was no sufficient cause for not filing the M.C.C. within the period of prescribed limitation.<br><br>Therefore, I do not find any substance in the application for condonation of delay and the M.C.C., same are liable to be dismissed and they are hereby dismissed, at the admission stage itself.<br><br>Sd/-<br>L.C. Bhadoo<br>Judge | |